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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,760	04/18/2005	Augusto Cesar Mangabeira Nunez	205/1/009	4312
170	7590	01/10/2008	EXAMINER	
RICHARD M. GOLDBERG 25 EAST SALEM STREET SUITE 419 HACKENSACK, NJ 07601			PICKETT, JOHN G	
		ART UNIT	PAPER NUMBER	
		3728		
		MAIL DATE		DELIVERY MODE
		01/10/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/531,760	MANGABEIRA NUNEZ, AUGUSTO CEZAR	
Examiner	Art Unit		
Greg Pickett	3728		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 10 October 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 5-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 5-10 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 10 October 2007 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

1. This Office Action acknowledges the Amendment filed 10 October 2007. Claims 5-10 are pending in the application. Claims 1-4 have been canceled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Drawings*

3. The drawings filed 10 October 2007 are acknowledged. These drawings are acceptable.

### *Claim Rejections - 35 USC § 102*

4. Claims 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourset (US 6,086,823).

Claim 5: Bourset discloses a contact lens case with a base 1, two independent containers 10 & 10', each container comprising an outer wall 2 & 2' connected to the base, an inner wall 31/32 having a height greater than the height of outer walls 2 & 2' (see Figures 1 and 2), an enclosed chamber 30 & 30', at least one opening 33, and an enclosed space between the inner and outer walls fluidly connected to the chambers 30 & 30' (see Figures 1 and 2). The term "connected to" is a broad term and only requires attachment in some manner. When the lids 20/20' are closed, inner wall 31/32 is connected to the base by means of a snap fit to the lid and a screw connection of the lid

to the base, and through this connecting-chain of structures, inner wall 31/32 is "connected to" the base. Although Bourset discloses the lens between the inner and outer walls, it is fully capable of retaining a lens within chambers 30 & 30'.

Claims 6 and 7: Bourset discloses the outer wall having an outer surface that is cylindrical (Col. 5, line1), and hemi-spherical chambers 10 and element 30. Accordingly, the walls have an annular configuration (see also Figures 5, 7, 9, and 10).

Claim 8: Bourset discloses slots 33 (see Figures 6 and 7).

Claims 9 and 10: Bourset discloses lids 20 & 20' and screw threads on outer wall (see Figures 1-3).

### ***Response to Arguments***

5. Applicant's arguments filed 10 October 2007 have been fully considered but they are not persuasive.

In response to the applicant's assertion that 31/32 is not an inner wall, as shown in Figure 4, 31/32 shows an integral structure, forming a barrier (the arrangement could be identified by the numeral 30). This barrier is considered a wall and is arranged internal to the outer walls 2 & 2' (see Figure 1).

Applicant's argument that Bourset suffers the same problems as conventional lens cases is not found persuasive since the overflow prevention is not presented in the claim. Applicant is arguing significantly more than claimed.

As stated above, the term "connected to" is a broad term and only requires attachment in some manner. When the lids 20/20' are closed, inner wall 31/32 is

connected to the base by means of a snap fit to the lid and a screw connection of the lid to the base, and through this connecting-chain of structures, inner wall 31/32 is "connected to" the base.

As to the argument concerning the snap fit of the element 30 to the lid prevents placement of a lens within the chambers 30/30', a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The structures of Bourset are formed of deformable plastic and the 24/31 are rounded; the portions 30 are fully capable of being snapped off of the lids to allow placement of a lens within the chamber.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Pickett/  
Primary Examiner  
Art Unit 3728